

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:
GREGORY P. EINHORN
MORRISON & FOERSTER LLP
3811 VALLEY CENTRE DRIVE, SUITE 500
SAN DIEGO, CA 92130-2332

PCT

REC'D 02 MAY 2006

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WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Date of mailing
(day/month/year) **28 APR 2006**

Applicant's or agent's file reference

FOR FURTHER ACTION

See paragraph 2 below

595142000140

International application No.

International filing date (day/month/year)

Priority date (day/month/year)

PCT/US05/08839

17 March 2005 (17.03.2005)

17 March 2004 (17.03.2004)

International Patent Classification (IPC) or both national classification and IPC

IPC(7): A61K 36/87 and US Cl.: 424/766

Applicant

TAKEMOTO, ARNOLD C

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US

Mail Stop PCT, Attn: ISA/US
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Facsimile No. (571) 273-3201

Date of completion of this opinion

Authorized officer

Susan D. Coe

Telephone No. (571) 272-1600

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US05/08839

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of:

- ☒ the international application in the language in which it was filed
- ☐ a translation of the international application into _____, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

- ☐ a sequence listing
- ☐ table(s) related to the sequence listing

b. format of material

- ☐ on paper
- ☐ in electronic form

c. time of filing/furnishing

- ☐ contained in the international application as filed.
- ☐ filed together with the international application in electronic form.
- ☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US05/08839

Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims <u>2-57</u>	YES
	Claims <u>1,58 and 59</u>	NO
Inventive step (IS)	Claims <u>21,22 and 32</u>	YES
	Claims <u>1-20,23-31 and 33-59</u>	NO
Industrial applicability (IA)	Claims <u>1-59</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Claims 1, 58, and 59 lack novelty under PCT Article 33(2) as being anticipated by US Pat. No. 6,432,453. US '453 teaches compositions that contain alpha-lipoic acid, tocopherols, derivatives of vitamin A, EDTA, and medium chain triglycerides (see column 4 and Examples).

Claims 1-20, 23-31, 33-59 lack an inventive step under PCT Article 33(3) as being obvious over US Pat. No. 6,503,506 and US Pat. Pub. No. 2002/009,8253.

US '506 teaches an antioxidant composition. The composition contains medium chain triglycerides, fruit polyphenols and lecithin (see top of column 9 and claims).

US '253 teaches an antioxidant composition that contains broccoli, citrus fruit bioflavonoids, bilberry extract, calcium D-glucarate, and grape seed extract (see page 5, first column). According to applicant's specification, broccoli, grapes, and berries are sources of plant indoles. In addition, applicant's specification states that grape seed extract is a source of polyphenols.

These references show that it was well known in the art at the time of the invention to use the claimed ingredients in antioxidant compositions. It is well known that it is prima facie obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is useful for the same purpose. The idea for combining them flows logically from their having been used individually in the prior art.

The other ingredients claimed by applicant but not specifically taught by the reference are also considered obvious to add to the composition taught by the combination of the reference because these ingredients are generally known in the art to be beneficial for the health of an individual.

Claims 21, 22, and 32 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest the claimed method.

Claims 1-59 meet the criteria set out in PCT Article 33(4), and thus claims 1-59 have industrial applicability because the subject matter claimed can be made or used in industry.

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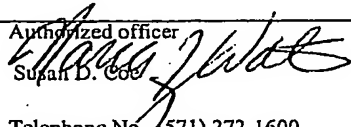
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Name and mailing address of the ISA/ US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (571) 273-3201	Date of completion of this opinion	Authorized officer  Susan D. Coe Telephone No. (571) 272-1600
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